

SOLAE, LLC,

**vs.**

**Defendants.**

Case No. 4:03CV01595RWS

## JURY TRIAL DEMANDED

Plaintiff Solae, LLC (“Solae” or “Plaintiff”), by and through its attorneys, replies to Defendant, Amerifit Nutrition, Inc.’s, Answer and Counterclaims to Plaintiff’s Second Supplemental Complaint (“Amerifit’s Answer”), as follows:

1. Paragraphs 1-42 of Amerifit's Answer are responses to the allegations in Solae's Second Supplemental Complaint to which no response is necessary or appropriate.

## Invalidity

2. Solae denies the allegations contained in paragraph 43 of Amerifit's Answer.
3. Solae denies the allegations contained in paragraph 44 of Amerifit's Answer.
4. Solae denies the allegations contained in paragraph 45 of Amerifit's Answer.

**Non-Infringement**

5. Solae denies the allegations contained in paragraph 46 of Amerifit's Answer.
6. Solae denies the allegations contained in paragraph 47 of Amerifit's Answer.
7. Solae denies the allegations contained in paragraph 48 of Amerifit's Answer.

**Counter-Claim**

**Declaratory Judgment**

8. Solae admits the allegations contained in paragraph 49 of Amerifit's Answer.
9. Solae does not have sufficient information to admit or deny the allegations contained in paragraph 50 of Amerifit's Answer.

10. Solae admits that paragraph 51 of Amerifit's Answer purports to state a counterclaim for a declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 6,642,212 ("the '212 patent"); U.S. Patent No. 6,664,382 ("the '382 patent"); and U.S. Patent No. 6,680,381 ("the '381 patent") under the patent laws of the United States, Title 35 United States Code.

11. Solae admits the allegations contained in paragraph 52 of Amerifit's Answer.
12. Solae admits the allegations contained in paragraph 53 of Amerifit's Answer.
13. Solae admits the allegations contained in paragraph 54 of Amerifit's Answer.
14. Solae admits the allegations contained in paragraph 55 of Amerifit's Answer.

**COUNT I - Invalidity of the '212 patent**

15. Paragraph 56 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55 in Amerifit's Answer, as set forth in paragraphs 8-14 above.

16. Solae denies the allegations contained in paragraph 57 of Amerifit's Answer.

**COUNT II - Invalidity of the '382 patent**

17. Paragraph 58 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55 and 57 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55 and 57 in Amerifit's Answer, as set forth in paragraphs 8-14 and 16 above.

18. Solae denies the allegations contained in paragraph 59 of Amerifit's Answer.

**COUNT III - Invalidity of the '381 patent**

19. Paragraph 60 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55, 57 and 59 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57 and 59 in Amerifit's Answer, as set forth in paragraphs 8-14, 16 and 18 above.

20. Solae denies the allegations contained in paragraph 61 of Amerifit's Answer.

**COUNT IV - Non-Infringement of the '212 patent**

21. Paragraph 62 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55, 57, 59 and 61 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57, 59 and 61 in Amerifit's Answer, as set forth in paragraphs 8-14, 16, 18 and 20 above.

22. Solae denies the allegations contained in paragraph 63 of Amerifit's Answer.

**COUNT V - Non-Infringement of the '382 patent**

23. Paragraph 64 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55, 57, 59, 61 and 63 of Amerifit's Answer. In response, Solae realleges and

incorporates by reference its responses to paragraphs 49-55, 57, 59, 61 and 63 in Amerifit's Answer, as set forth in paragraphs 8-14, 16, 18, 20 and 22 above.

24. Solae denies the allegations contained in paragraph 65 of Amerifit's Answer.

**COUNT IV [sic] - Non-Infringement of the '381 patent**

25. Paragraph 66 of Amerifit's Answer realleges the allegations contained in paragraphs 49-55, 57, 59, 61, 63 and 65 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57, 59, 61, 63 and 65 in Amerifit's Answer, as set forth in paragraphs 8-14, 16, 18, 20, 22 and 24 above.

26. Solae denies the allegations contained in paragraph 67 of Amerifit's Answer.

WHEREFORE, Plaintiff Solae requests judgment dismissing Defendant Amerifit's counterclaims in all respects, and for such other and further relief as the Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable in this action.

Respectfully Submitted,

**LEWIS, RICE & FINGERSH, L.C.**

Dated: April 21, 2004

By: /s/ C. David Goerisch  
Andrew Rothschild, #4214  
C. David Goerisch, #77207  
Michael J. Hickey, #101931  
500 North Broadway, Suite 2000  
St. Louis, Missouri 63102  
(314) 444-7600 – Telephone  
(314) 241-6056 – Facsimile  
E-mail: arothschild@lewisrice.com  
dgoerisch@lewisrice.com  
mhickey@lewisrice.com

Patricia A. Carson  
Thomas F. Fleming  
**KAYE SCHOLER LLP**  
425 Park Avenue  
New York, NY 10022  
Telephone: (212) 836-8000  
Facsimile: (212) 836-8689  
E-mail: pcarson@kayescholer.com  
tfleming@kayescholer.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 21st day of April, 2004, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following persons:

Stephen H. Rovak  
Michael T. Marrah  
Kirill Y. Abramov  
Sonnenschein, Nath & Rosenthal LLP  
One Metropolitan Square, Suite 3000  
St. Louis, MO 63102

David K.S. Cornwell  
Timothy J. Shea, Jr.  
Donald R. Banowit  
Sterne, Kessler, Goldstein & Fox, P.L.L.C.  
1100 New York Avenue, N.W.  
Washington, DC 20005

/s/ C. David Goerisch